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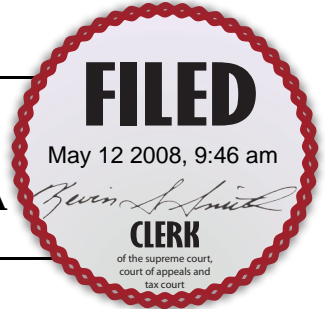
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**IN THE
COURT OF APPEALS OF INDIANA**



IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
S.F. and D.L., Minor Children, and SHERRY F.,)
Mother, and DAVID F. and DAVID L., Fathers)

SHERRY F.,)

Appellant-Respondent,)

vs.)

PORTER COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 64A05-0711-JV-636

APPEAL FROM THE PORTER CIRCUIT COURT
The Honorable Mary R. Harper, Judge
The Honorable Edward J. Nemeth, Magistrate
Cause Nos. 64C01-0509-JT-959 and 64C01-0509-JT-960

May 12, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Appellant Sherry F. (“Mother”) appeals the involuntary termination of her parental rights, in Porter Circuit Court, to her sons S.F. and D.L. We affirm.

Issues

Mother raises the following issues on appeal:

- I. Whether the trial court’s judgment is supported by clear and convincing evidence; and,
- II. Whether Mother was denied due process of law when the trial court failed to set a review hearing during the CHINS proceedings.

Facts and Procedural History

Mother is the natural mother and legal guardian of S.F., born on March 30, 2001, and D.L., born on March 25, 2003. Prior to the births of S.F. and D.L., Mother was married for approximately thirteen years to Mark H., the father of her two oldest children. During the marriage, Mark H. became physically abusive toward both Mother and their two children. Upon the parties’ divorce, Mother was awarded custody of the children. Soon thereafter, Mother remarried and had a child with Lindsey M. However, Mother ended her relationship with Lindsey M. because he, too, was physically and emotionally abusive. Mother left all three children with Lindsey M. and moved to Indiana to live with her sister.

Approximately one month after ending her relationship with Lindsey M., Mother began a new relationship with David F., whom she married. David F., however, was also abusive and controlling, so Mother left her husband approximately five months after

becoming pregnant.¹ After the baby, S.F., was born, David F. informed Mother that he had no interest in seeing, caring for, or having a relationship with his son.

Mother's next relationship was with David L. Several months after moving in with David L., he became controlling and both emotionally and physically abusive toward Mother. Nevertheless, Mother became pregnant by David L., and on March 25, 2003, gave birth to their son, D.L.

While living with David L., Mother would allow him to baby-sit both S.F. and D.L. while she was at work. However, Mother began to observe suspicious incidents involving David L. and the children. On one occasion, Mother walked into their bathroom and observed David L. standing by the bathtub holding S.F., who was then three years old. S.F. appeared blue and lifeless. Mother grabbed S.F. and began patting his back. David L. grabbed S.F. back and held him over the sink, patting his back until the child "spit up a bunch of soapy phlegm." Tr. at 282. In response to Mother's questioning, David L. explained that S.F. had gotten soap in his eyes and began holding his breath. Mother did not call the police or obtain medical help for S.F.

In 2004, Mother noticed that fourteen-month-old D.L. had a lump on his arm and took him to a clinic to have it examined. Doctors informed Mother that D.L. had a fractured bone in his arm, but that it had been healing for approximately three to six weeks, therefore nothing could be done. David L.'s explanation was that D.L. had fallen on some objects

¹ It is unclear from the record whether Mother is still married to David F. She testified that she filed for divorce, but she had "never gotten [her] papers." Tr. at 277.

lying on the floor after S.F. knocked him over. Mother testified she believed David L.'s explanation at the time.

Several weeks later, in May 2004, David L. telephoned Mother at work to tell her that D.L. had injured his back. David L claimed that D.L. had been riding on the back of S.F.'s bicycle, and that he had fallen off, striking his back on water valves sticking out of the ground. When Mother returned home from work later that evening, she did not inspect D.L. because he was asleep. Mother testified that the next day, Mother did not observe anything unusual about D.L., except that he was feverish and "whiny". *Id.* at 293. Later, D.L.'s maternal grandmother discovered a lump on D.L.'s back, but David L. refused to allow anyone to seek medical attention for D.L. Instead, David L. wrapped D.L. in a bandage and put a rolled up sock on D.L.'s back, claiming he was instructed to do so by a doctor he had telephoned.

Approximately three days later, on May 25, 2004, police received an anonymous tip that D.L. had been injured but had not received proper medical attention. The police investigated the complaint and immediately removed the children from Mother's home. A detention hearing was held within forty-eight hours of the children's emergency removal, and the trial court, on June 9, 2004, issued an order authorizing the Porter County Department of Child Services ("PCDCS") to file a CHINS petition. The order stated that: (1) there was probable cause to believe the children were in need of services ("CHINS"), (2) continued detention outside the home was necessary for the safety and protection of the children, (3) D.L. was to remain in the care, custody, and control of Riley Children's Hospital and S.F.

was to remain in foster care, (4) Mother was granted supervised visitation with the children, and (5) David L. was denied visitation with the children.

On June 22, 2004, the trial court issued an Emergency Status Review Hearing Order revoking Mother's visitation with the children due to D.L.'s severe medical condition and to the emotional impact the visits were having on S.F. On September 7, 2004, following a fact-finding hearing on the CHINS petition², the trial court issued an order finding the children to be CHINS and setting a Dispositional Hearing for November 20, 2004.

Following a Dispositional Hearing and Periodic Review Hearing, the trial court issued an order granting the parties' Verified Joint Petition for Parental Participation which directed Mother to, among other things: (1) cooperate with all persons providing care, treatment or rehabilitation for the children, (2) financially support the children, (3) comply with all reasonable requests of the Case Manager and Court Appointed Special Advocate ("CASA"), (4) complete a psychological evaluation to assess Mother's need for services and follow through with any and all recommendations, (5) participate in individual counseling to address self esteem issues, the ability to protect her children, accountability, reducing impulsive behaviors, and becoming self-reliant, (6) attend and successfully complete parenting classes, (7) obtain a driver's license, and (8) obtain and maintain appropriate employment and housing, in order to achieve reunification with her children.

² A careful combing of the record left this Court unable to find a copy of the CHINS petition. The parties are reminded that Indiana Appellate Rule 50(f) requires the inclusion of pleadings and other documents necessary for resolution of the issues raised on appeal in the Appendices.

As a result of his abuse of D.L., David L. was convicted of Neglect of a Dependent and was sentenced on March 8, 2005, to ten years of incarceration. Mother was also convicted of Neglect of a Dependent and sentenced to three years of formal probation and one year of home detention.

Meanwhile, on September 25, 2005, the PCDCS filed a petition for termination of all the parents' parental rights to S.F. and D.L. A fact-finding hearing on the termination petition was held on three separate days beginning on March 12, continuing on March 20, and concluding on March 30, 2007. The trial court entered its order terminating all three parents' parental rights to their respective children on September 28, 2007.³ This appeal ensued.

Discussion and Decision

I. Clear and Convincing Evidence

We first address Mother's assertion that the trial court's judgment is not supported by clear and convincing evidence.

This Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will neither reweigh the evidence nor judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied* (2004). We consider only the evidence and reasonable inferences

³ David L. voluntarily relinquished his paternal rights to D.L. during the fact-finding hearing on the termination petition. David F., father of S.F., never appeared at any of the proceedings below. The trial court terminated the parent-child relationships of both fathers to their respective children in its judgment. Neither father is a party to this appeal.

that are most favorable to the judgment. *Id.*

Here, the trial court made specific findings in terminating Mother's parental rights. Where the trial court enters specific findings of fact, we must first determine whether the evidence supports the findings. *Id.* Then, we determine whether the findings support the judgment. *Id.* We will not set aside the trial court's judgment terminating parental rights unless it is clearly erroneous. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 620 (Ind. Ct. App. 2006), *trans. denied* (2006). A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings of fact do not support the trial court's conclusions thereon, or the conclusions thereon do not support the judgment. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied* (1996). However, these parental interests are not absolute and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. *Id.* Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *K.S.*, 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege and prove by clear and convincing evidence that:

(A) [o]ne (1) of the following exists:

(i) the child has been removed from the parent for at least six (6)

months under a dispositional decree;

* * *

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Indiana Code § 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Works*, 592 N.E.2d 1232, 1234 (Ind. 1992).

Mother does not challenge the trial court's finding that the children had been removed for more than six months under a dispositional decree, or that the PCDCS has a satisfactory plan for the children's care and treatment. Mother does, however, challenge the evidence supporting the remaining factors set forth above.

A. Conditions Will Not be Remedied & Parent-Child Relationship Poses a Threat

Mother first challenges the trial court's determination that the PCDCS proved by clear and convincing evidence the conditions resulting in the children's removal and continued placement outside of her care will not be remedied and that continuation of the parent-child relationship poses a threat to the children's well being. Specifically, Mother asserts that David L. "was the harmful and violent factor in the children's lives and has voluntarily removed his presence from their lives permanently." Appellant's Br. at 14. Mother further

claims that she accepts responsibility for not more fully protecting her children and that she has taken affirmative steps to be a better parent for her children.

Initially, we note that Indiana Code Section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, only one of the two requirements of subsection (B) must be found by clear and convincing evidence. *See In re L.S.*, 717 N.E.2d 204, 209 (Ind. Ct. App. 1999), *trans. denied* (2000), *cert. denied* (2002). We will first review whether the trial court's finding that continuation of the parent-child relationship poses a threat to the children's well being is supported by clear and convincing evidence.

In determining that continuation of the parent-child relationship poses a threat to the children's well being, the trial court made the following pertinent findings and conclusions:

13. The Court finds there were several instances during the relationship between [Mother] and [David L.] in which the children were harmed or potentially harmed. On one occasion, [M]other walked into the bathroom while [David L.] was supposed to be giving [S.F.] a bath. [S.F.] was approximately age three and one-half at the time. The mother observed [David L.] holding [S.F.], who appeared to be blue and not breathing. [David L.'s] explanations included that [S.F.] had slipped in the bathtub, or that he had been holding his breath because he had gotten soap in his eyes. While not believing this explanation, [Mother] continued her relationship with [David L.] and continued leaving the children in his care. [Mother] chose not to report this incident to anyone, nor to seek any medical evaluation of [S.F.]. [Mother] indicates that she frequently found [S.F.] to be injured when she returned home from work. She states that she would believe [David L.'s] story regarding the cause of the injuries, and allow him to persuade her not to seek medical attention.
14. The Court finds that in the spring of 2004, [D.L.] sustained a broken arm while in the care of [David L.]. [David L.] explained that the injury occurred when [S.F.] fell on [D.L.]. No medical treatment was obtained, nor did [Mother] take any steps to report the injury or terminate her relationship with [David L.], or even to stop using him as a babysitter.

15. In May, 2004, [D.L.] sustained fractured and displaced vertebrae as a result of physical abuse perpetrated by [David L.]. The Court finds that the explanations offered by [David L.] at the time of the injury to be completely lacking in any indicia of credibility. The Court finds that [Mother], nevertheless, chose to believe these incredible explanations, and chose not to obtain any medical treatment for [D.L.]. The incident took place on a Thursday afternoon while [M]other was at work . . . [D.L.] received no treatment besides Tylenol until Sunday morning, when police arrived on a neglected child call. Mother stated she was concerned, and [although] both she and [David L.] knew of the bump from at least Friday morning on[,] [t]hey neglected to take [D.L.] for treatment. The Court finds that these decisions, and inaction by [Mother], were blatantly neglectful. To this day[,] [D.L.] continues to suffer emotionally and physically from the effects of the injury and the lack of treatment at the time of the injury.
17. (sic) The Court finds, consistent with testimony and evidence, that [S.F.] has suffered from severe emotional trauma, similar to post-traumatic stress disorder. This finding is supported by the testimony of Dr. Richard Lawlor from the Forensic Psychiatry Clinic of the Indiana University School of Medicine, who conducted a review of the records and performed a bonding assessment. [S.F.] was found to have high levels of anxiety related to his mother. [S.F.] also had been led to believe that he was responsible for the injuries suffered by [D.L.], which required extensive therapy to “de-program” him. [S.F.] also retains a phobia of water stemming from the near drowning he suffered at the hands of [David L.] at age three and one-half. [S.F.] shakes whenever he hears a police or ambulance siren.
18. The Court finds, based upon the psychological evaluation of [Mother] performed by the Family & Youth Services Bureau, that:

[Mother’s] recollection of the details surrounding the physical abuse of her children is at odds with the reports of others. She tends to explain this disparity by believing that people have twisted the facts to portray her in an unfavorable light. She reports a history of feeling victimized by others. She seems to see herself as a victim of [David L.] and now the system that has removed her children from her custody. She claims she has done everything asked of her and more and it is not acknowledged by others. Test results suggest that [Mother’s] emotional problems are longstanding, that she is suspicious and

tends to blame others for her problems. Testing also suggests the possibility of delusional thinking.

19. The Court finds, based upon a letter dated March 21, 2005 from Tom Moeller, MS, LSW, the therapist for [Mother] to the Family Case Manager, that:

[Mother] accepts but does not understand why she allowed herself to depend upon David's version of (the children's) injuries and relied upon a variety of other people rather than her own judgment. This last issue promises to be significant to her long-term success.

20. The Court finds, based upon a letter dated September 6, 2006 from Debbie Cincoski, [Mother's] Adult Probation Officer, to the Family Case Manager, that:

On August 29, 2006, [Mother] and I discussed the criminal case for which she is on probation I found [Mother] continues to minimize her role in the abuse/neglect of her son [D.L.] and 'finds it hard to believe that [David L.] would ever hurt [D.L.]'. . . Moreover, [Mother] does not perceive her actions as neglectful but rather a lack of action because she was in what she describes as an abusive relationship with [David L.] She has stated that he would keep the children away from her and that is what prohibited her from seeking the appropriate medical care for [D.L.].

21. The Court finds, based upon reports from [D.L.'s] therapist at Choices Counseling Services, that [S.F.] experiences "significant anxiety about the concept of permanent placement, and harbors a fear that he will be potentially reunified with his biological mother." . . . He expresses fear about being returned to her and being mistreated. [D.L.'s] therapist explained that [D.L.] has significant mixed emotions about separation from his foster parents, in which a strong bond has been observed. "His anxiety in conjunction with fear of his biological mother can further instigate attachment issues for [S.F.]. Communication with his [M]other may serve as a source for symptoms related to trauma re-surfacing." (Treatment Summary, dated September 7, 2005).

* * * *

23. The Court further finds and adopts the findings and conclusions of Dr. Lawlor that continuation of the parental relationship in these cases clearly threatens [S.F.'s] and [D.L.'s] physical and emotional development.

* * * *

CONCLUSIONS OF LAW

* * * *

6. The [C]ourt finds that [Mother] in this case has long-standing emotional problems that lead her to repetitively become involved in relationships in which she allows herself to be controlled and abused. Further, she has continuously and repetitively allowed other persons to harm her children and to continue to do so even after she had clear evidence that the abuse was occurring. She has chosen to believe excuses and explanations for the injuries to her children that were blatantly and completely lacking in any credibility. She has even chosen not to believe her own eyes and ears, having witnessed the near drowning of her son, only to continue her relationship with the perpetrator and, worse yet, continue to allow the perpetrator to provide unsupervised care for the children. She has consistently and repetitively failed to seek necessary and appropriate medical care for the children after they have been abused, choosing to protect herself and the perpetrator rather than protect and care for her children. Her son, [D.L.], continues to suffer from the effects of his back injury, both physically and emotionally, no doubt due in part to the fact that he had to wait for three more days after the injury to receive treatment. Mother knew at that time that something was wrong, and that he needed medical attention, yet she failed to do anything. Were it not for the call to the police by someone else, it is hard to say at what point, if ever, [D.L.] would have received treatment. Based on the incident when there was no medical treatment for his broken arm and it healed on its own, it is not unreasonable to think he may never have received treatment for his back if it had not been for someone else stepping in. [Mother] fails to recognize or understand how or why these things have happened, and has great difficulty in accepting direct personal responsibility for the events, which causes great concern about her ability to prevent re-occurrences in the future. These consistent, habitual, and repetitive patterns of behavior are clear and convincing evidence . . . that the continuation of the parent-child relationships pose a threat to the well [] being of [S.F.] and [D.L.] [T]o continue the child-parent

relationships would clearly be a threat to each child's emotional and physical development.

Appellant's App. at 15-18, 21-22. These findings and conclusions are supported by the evidence.

The record reveals that, at the time of the termination hearing, S.F. still had "extreme[ly] high levels of anxiety relating to his mother." Tr. at 42, 51. Forensic Psychologist Dr. Lawlor further testified that he felt it would be "extremely negative" for S.F. to be returned to Mother's care and that the anxiety and post-traumatic stress syndrome symptoms that S.F. has had would "get worse." *Id.* at 56. Dr. Lawlor also did not recommend reunification between D.L. and Mother, stating, "I think that would be disruptive to his development to do that" *Id.* at 57. He went on to state that if the children were returned home to resume living with Mother, and that did not work, that it "would almost guarantee for [S.F.] a horrible outcome, and I think that it would certainly devastate [D.L.]." *Id.* at 76. With regard to Mother, Dr. Lawlor testified that Mother is "in her [forties], and she is not a person who has shown a capacity to function fully independently." *Id.* at 69.

Similarly, while acknowledging progress in some areas, Mother's counselor, Mr. Moeller, testified that Mother still "lacks confidence in her own ability, and that's a personality kind of a characteristic of hers that in my mind contributes to a lot of what happened." *Id.* at 137-38. Mother's Probation Officer testified that Mother "continues to minimize [her] role" in the children's abuse and neglect. *Id.* at 173. Likewise when Court Appointed Special Advocate Jane Palin was questioned as to whether she felt Mother had

progressed in her level of acceptance of responsibility “so that we could be sure [the abuse] [won’t] happen again[,]” Palin responded, “No.” *Id.* at 183.

Family Case Manager Candace Frederick testified that Mother had made “very minimal progress” in counseling. *Id.* at 204. She also testified that Mother was not in compliance with court-ordered services as she had not obtained her G.E.D., was unemployed, did not have a valid driver’s license, and did not participate in parenting classes. Frederick went on to say, “It’s my opinion that [Mother] needs many more years of counseling before she would adequately be able to care for her children, if at all.” *Id.* at 221. Moreover, Frederick suspected S.L. would “have to go back into intensive therapy” and that “it would be very stressful for [S.L.]” if the CHINS case were to continue. *Id.* at 234. Lastly, we note that at the time of the termination hearing, Mother was living with and planning to marry a man who admitted at the termination hearing that he had several alcohol-related convictions and had been convicted of Domestic Battery for an incident involving a former girlfriend.

Termination of a parent-child relationship is proper where a child’s emotional and physical development is threatened. *In re R.S.*, 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), *trans. denied* (2003). The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development is permanently impaired before terminating the parent-child relationship. *Id.* Based on the foregoing, we conclude that the trial court’s

determination that continuation of the parent-child relationship poses a threat to both S.F.'s and D.L.'s well being is supported by clear and convincing evidence.⁴

B. Best Interests of the Child

Next, we turn to Mother's allegation that the PCDCS failed to prove by clear and convincing evidence that termination of Mother's parental rights is in S.F.'s and D.L.'s best interests.

We are mindful that, in determining what is in the best interests of the children, the court is required to look beyond the factors identified by the Department of Child Services and to look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003). In so doing, the trial court must subordinate the interests of the parent to those of the children. *Id.*

In determining that termination of Mother's parental rights is in S.F.'s and D.L.'s best interests, the trial court made the following additional findings and conclusions:

22. The Court finds, based upon the opinion testimony of Dr. Richard Lawlor, that it would be extremely negative for either child to be removed from their present homes, and would be positive for both boys to be adopted by their foster families. Dr. Lawlor further testified that it was difficult to gauge [M]other's sincerity in her admission of responsibility, given that she is prone to making poor judgments and lacking insight. Dr. Lawlor determined that if the children were returned to [M]other, it would be horrible for [S.F.] and devastating for [D.L.]. Both children have been developing normally since their placement with their foster families, and have shown great improvement in their current placements.

⁴ Having concluded the trial court's finding that continuation of the parent-child relationship poses a threat to the children's well being is supported by clear and convincing evidence, we need not consider whether the PCDCS proved by clear and convincing evidence that the conditions requiring removal would not be remedied. *L.S.*, 717 N.E.2d at 209.

CONCLUSIONS OF LAW

* * * *

7. The Court finds clear and convincing evidence that termination of the parent-child relationships is in the best interests of the children. . . . In this case, the [C]ourt finds the testimony from Dr. Lawlor and from [the] CASA to be compelling. It is clear to the [C]ourt that [S.F.] continues to suffer significant emotional trauma as a result of his experiences in [Mother's] care. He continues to maintain high levels of anxiety at even the mention of his mother, based upon his fear of being returned to her care. On the other hand, [S.F.'s] interaction with his foster parents is very relaxed, comfortable, and loving. He feels safe, secure, and nurtured. He is happy and doing well in school. Dr. Lawlor determined that each child has developed a strong bond with his foster family. The loss of this bonded relationship at this time would be devastating to [S.F.].
8. The [C]ourt finds, consistent with the testimony, [D.L.] continues to suffer emotionally as a result of the trauma experienced in his parents' care. Because of his age at the time of removal, [D.L.] has no bonded relationship with, nor even memory of, his mother. Both children desperately need permanency in their lives. Dr. Lawlor, the CASA, Karen Sheets, the Family Case Manager, and the foster parents all believe that it is in the best interests of the children to terminate parental rights, rather than to continue dragging this case out longer, because the effects of returning them to [Mother] would be harmful to them. [S.F.] and [D.L.] have each experienced some permanency and stability in their current placements, which is something neither [M]other nor either father can provide. Each are now in a placement where they are well [] cared for and stable. [S.F.] and [D.L.] deserve to have a sense of permanency, which they can get by termination of the parent-child relationships and adoption by their current foster families.

Appellant's App. at 18, 22-23. These findings are also supported by the evidence.

The record reveals that Dr. Lawlor felt termination was in the children's best interests.

When questioned as to his opinion of the State's plan to terminate Mother's parental rights to the children, with the ultimate goal being adoption by the current foster parents, Dr. Lawlor responded, "I think that would be a positive for both boys, because it would ensure

some stability for them.” *Id.* at 59. Dr. Lawlor further testified that S.F. was “fairly well-adjusted now” with his foster family and, despite tremendously high levels of anxiety focused primarily around worries that he is going to have to interact with Mother, agreed that S.F. was “adapting and thriving” in his current foster placement. *Id.* at 68.

In testifying that she also believed termination of Mother’s parental rights and adoption by the current foster parents was in the children’s best interests, Family Case Manager Frederick stated, “I think both children are where they best belong. They are both thriving at this time, and I think it would be detrimental to both children to have to move either placement.” *Id.* at 209. She further explained, “These are small children. They have already been in care[,] in May it will be three years. I think that they deserve permanency.” *Id.* at 235. Therapist Jennifer Strayer also testified that termination of Mother’s parental rights is in the children’s best interests and likewise stated that termination should occur due to the children’s need for permanency.

The evidence establishes that Mother has a long history of neglecting her children and of repeatedly choosing to remain in dependent, abusive relationships rather than choosing to protect the health and safety of her children and herself. Despite extensive services offered to Mother in an attempt to help her both achieve her independence and learn how to properly care for her children, as of the date of the termination hearing, Mother was still unemployed, did not have a driver’s license, had not earned her GED, had not participated in parenting classes, and was living with a man who admitted to having a prior conviction for domestic abuse.

We have previously held that a court may consider a parent's response to and benefit from services offered by the Department of Child Services in determining the probability of future detrimental behavior. *K.S.*, 750 N.E.2d at 837. Likewise, the recommendations of a child's caseworker and court appointed advocate that parental rights should be terminated support a finding that termination is in the children's best interests. *McBride*, 798 N.E.2d at 203 (citing *In re T.F.*, 743 N.E.2d 766, 766 (Ind. Ct. App. 2001), *trans. denied* (2001)). Based on the totality of the evidence, we conclude that the trial court's determination that termination of Mother's parental rights is in the children's best interests is supported by clear and convincing evidence. *See McBride*, 798 N.E.2d at 203 (concluding that clear and convincing evidence supported the trial court's termination of parental rights where children were thriving in their current foster home and where the children's caseworker and court appointed special advocate testified as to the children's need for permanency).

II. Constitutional Right to Due Process

Next, we review Mother's allegation that she was denied due process of law when the trial court "failed to set a statutorily required formal review hearing" during the CHINS proceedings. Appellant's Br. at 1.

The Due Process Clause of the United States Constitution prohibits state action that deprives a person of life, liberty, or property without a fair proceeding. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. When the State seeks to terminate the parent-child relationship, it must do so in a manner that meets the requirements of the due process clause. *In re S.P.H.*, 806 N.E.2d 874, 878 (Ind. Ct. App. 2004). Our legislature has enacted an interlocking statutory scheme governing CHINS proceedings and the involuntary

termination of parental rights proceedings. *Id.* This statutory scheme is designed to protect the rights of parents in raising their children while allowing the State to effect its legitimate interest in protecting children from harm. *Id.* Thus, the CHINS and involuntary termination statutes are not independent of each other, and an involuntary termination proceeding is governed by the procedures prescribed by the CHINS statutes contained in Indiana Code Article 31-34. *Id.*

At the outset, we observe that Mother, who was represented by counsel throughout the CHINS and termination proceedings, failed to raise her due process arguments pertaining to the review hearing during the CHINS proceedings. She also failed to raise this issue during the termination hearing, by objecting *in limine* to the CHINS proceedings because of failure to comply with statutory provisions. Despite the constitutional nature of Mother's claim, it is well established that we may consider a party's constitutional claim waived when it is raised for the first time on appeal. *Id.* at 877. Because Mother raises her due process allegation of error for the first time on appeal, we deem this issue waived. *See id.* at 877-78. Waiver notwithstanding, we will address Mother's contention that she was deprived due process of law on the merits.

Mother alleges that the trial court violated her procedural due process rights during the underlying CHINS proceedings when it failed to timely conduct a periodic review hearing, pursuant to Indiana Code Section 31-34-21-2, after the trial court authorized the PCDCS's request to file a petition to terminate her parental rights. In support of Mother's contention that her due process rights were violated, Mother states, "Numerous and substantial procedural irregularities are grounds for reversal of a termination judgment" and directs our

attention to *A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000), *trans. denied* (2001). However, Mother immediately thereafter acknowledges that “[t]he case at bar is not replete with procedural errors[.]” Nevertheless, Mother argues that in failing to set a periodic review hearing, she was denied the opportunity to seek a court order for therapeutic visitation with S.F. which “may have cost [Mother] the opportunity to begin reforging her bond with [S.F.]” Appellant’s Br. at 19. Mother therefore concludes the trial court’s judgment must be reversed.

We pause to reiterate the fact that in *A.P.*, we were faced with a “record replete with procedural irregularities throughout the CHINS and termination proceedings that [were] plain, numerous, and substantial[.]” and which, when taken together, required reversal of the trial court’s judgment. *A.P.*, 734 N.E.2d at 1118. In reversing the trial court, however, we clearly noted that standing alone, we were not convinced that any one of the seven identified deficiencies would have resulted in a due process violation. *Id.* Because we do not find a multiplicity of procedural irregularities in the underlying proceedings, we find *A.P.* distinguishable from the present case.

Our review of the record reveals that the PCDCS correctly argues that “[Mother’s] assertion that therapeutically supervised visitation[] with [S.F.] was recommended to the court by Dr. Richard Lawlor’s evaluation report . . . is inaccurate.” Appellee’s Br. at 25. Dr. Lawlor did not recommend visitation in his report to the trial court, dated September 9, 2005. Rather, Dr. Lawlor indicated in his report that he agreed “with [S.F.’s] current therapist’s suggestion that, at a minimum, any contact with [Mother] needs to be in a therapeutic environment at this point with significant time allowed for [S.F.] to debrief and decompress

after such interactions.” Appellant’s App. at 221. The recommendation to which Dr. Lawlor refers was made in a letter, sent to Dr. Lawlor by S.F.’s therapist at the time, Dr. Mitchell Goldstein, a board certified child and adolescent psychiatrist. In that letter, Dr. Goldstein stated that he did *not* believe it was advisable for S.F. to see his mother because he believed contact with her “would be fraught with danger and hold possible deterioration for [S.F.’s] psychological makeup.” *Id.* at 91.

Based on the foregoing, we agree with the PCDCS that it was not “a foregone conclusion” that therapeutically supervised visits would have commenced had the trial court scheduled the review hearing as contemplated by the statute. Appellee’s Br. at 25. Thus, Mother’s assertion that she was denied an opportunity to request visitation with S.F. based on Dr. Lawlor’s report that such should occur is therefore unavailing. We further observe that Mother, who was represented by counsel, was provided with multiple opportunities to be heard at meaningful times, and in a meaningful manner, throughout both the CHINS and termination proceedings. Additionally, we have already determined that clear and convincing evidence supports the trial court’s judgment terminating Mother’s parental rights. Based on the foregoing, we do not believe that the trial court’s judgment would have been different if the trial court would have set a periodic review hearing following the PCDCS’s filing of the termination petition. Mother has failed to show how one alleged procedural error during the CHINS proceedings deprived her of her right to due process in the termination proceedings. Accordingly, we find no error. *See Castro v. State Office of Family & Children*, 842 N.E.2d 367, 376 (Ind. Ct. App. 2006) (concluding that, while technically in violation of the statute, the State’s failure to timely file the case plan did not deprive the

parent of due process), *trans. denied* (2006); *In re A.H.*, 751 N.E.2d 690, 701-02 (Ind. Ct. App. 2001) (concluding that even if parents did not have an opportunity to negotiate with the county office regarding the case plan, this procedural violation did not constitute a violation of the parents' right to due process where sufficient evidence was presented to support the trial court's finding), *trans. denied* (2001); *see also McBride*, 798 N.E.2d at 198 (stating that no reversible error occurred when parent failed to demonstrate how an alleged procedural error during the CHINS proceeding rose to the level of a due process violation).

Conclusion

In sum, we find clear and convincing evidence supports the trial court's judgment terminating Mother's parental rights to S.F. and D.L. Additionally, we conclude that the alleged procedural irregularity in the underlying CHINS proceedings did not serve to deprive Mother of due process during the termination proceedings. Accordingly, we find no error.

Affirmed.

BARNES, J., and BRADFORD, J., concur.